

APPEAL NO. 030900
FILED MAY 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2003. The hearing officer decided that the respondent (claimant) was injured in the course and scope of her employment on _____, and that, as a result of that injury, the claimant is entitled to supplemental income benefits (SIBs) for the 16th and 17th quarters, beginning on October 4, 2002, and ending on April 3, 2003. The appellant (carrier) has appealed on factual sufficiency grounds, urging that the medical documentation reflects that the claimant had an ability to work in the 16th quarter and that she did not satisfy the good faith requirement for the 17th quarter in that she did not look for work in every week of the qualifying period. The respondent responds and urges affirmance.

DECISION

Reversed and remanded in part and affirmed in part.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The good faith criteria of Section 408.142(a)(4) and Rule 130.102(b)(2) is in dispute. The claimant asserted that she had no ability to work as a result of her compensable injury during the qualifying period for the 16th quarter. The qualifying period for the 16th quarter was from June 22 through September 20, 2002. The hearing officer did not identify the narrative he found that specifically explains how the injury caused a total inability to work for the 16th quarter. In addition, although he briefly mentioned it, the hearing officer did not provide an explanation for his apparent decision to reject the report by Dr. B dated July 25, 2002, that states as an "other record which showed" the claimant was able to return to work in the qualifying period for the 16th quarter.

The hearing officer's decision, with respect to the 16th quarter of SIBs, is reversed and remanded for the hearing officer to make findings of fact regarding the elements in Rule 130.102(d)(4). Specifically, this is to identify the narrative which specifically explains how the injury causes a total inability to work and to explain the basis for his rejection of Dr. B's report as "an other record" showing an ability to work. See, Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000, stating that "in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record." See, *also*, Texas Workers' Compensation Commission Appeal No. 021910, decided September 16, 2002.

The hearing officer did not err in finding that the claimant is entitled to SIBs in the 17th quarter. A finding in accordance with Rule 130.102(d)(1) that an injured worker

has returned to work in a position "relatively equal" to his or her ability to work is sufficient to satisfy the good faith effort requirement for SIBs. Texas Workers' Compensation Commission Appeal No. 020103, decided February 27, 2002. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. Nothing in our review of the record indicates that the hearing officer's 17th quarter SIBs determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's determination that the claimant is entitled to SIBs for the 17th quarter is affirmed. The determination that the claimant is entitled to SIBs for the 16th quarter is reversed, and that issue is remanded for further proceedings consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge